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EXAMINER				
LAYNO, BENJAMIN				
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/658,864
Filing Date: September 09, 2003
Appellant(s): SNOW, ROGER M.

Mark A. Litman
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11/02/05 appealing from the Office action mailed 08/09/05.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,446,972	BRUNELLE	9-2002
4,861,041	JONES et al.	8-1989

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brunelle in view of Jones et al..

The patent to Brunelle discloses a method of playing a live casino card game with a bonus component. To play Brunelle's card game a player makes a wager 16 to play the live casino card game, and makes an optional side bet bonus wager 18 on the bonus game component, col. 3, line 65 to col. 4, line 3. A first number of three cards is dealt to a bonus hand position 26 (bonus hand), a second number of three cards is dealt to a player (player hand), and a third number of cards is dealt to a dealer 36 (dealer hand), col. 4, lines 4-6. The player plays against the dealer hand for rank 56, col. 4, lines 32-35. After comparison with the dealer hand is resolved, if the player hand has at least a predetermined winning arrangement of cards, the player attains at least a first bonus amount level on the player's placed optional side bet bonus wager, col. 4, lines 42-47. When the player has a winning arrangement of cards and the bonus hand 26 has at least a winning arrangement of cards, the bonus award paid to the player is

enhanced by a predetermined rank being present in the bonus hand, col. 4, lines 48-56. Also see pay table, Table II in columns 7 and 8. The first number of cards in the bonus hand position 26 are cards specific to play in the bonus event only. The bonus hand position cards 26 are not used in the play of the live casino table card game.

The only feature recited in claims 1 and 20 of the present invention is "winning **poker rank**". The ranking of hands in Brunelle's game is based on a total count value, the sum total value of the three cards in a hand, col. 4, lines 33-35. See also Tables I and II. However, Brunelle recites "**a hand of three aces** (total count value of 3) pays 30 to 1", col. 4, lines 38-39. The hand of three aces is a poker rank. The "Background" of Brunelle's specification recites several poker games, "Caribbean Stud", "Let It Ride". This suggest that poker may be analogous art.

The patent to Jones et al. discloses a card game having a jackpot or bonus component, Jones et al. teaches that when a player's hand has at least a predetermined winning arrangement of cards, (e.g. Six, seven and eight of the same suit, Three 7's), the player attains at least a first bonus amount level (e.g. 100 tokens, 50 tokens) on the player's placed optional side bet bonus wager, col. 3, line 47 to col. 4, line 8. In Brunelle's game each player is dealt three cards. In view of such teaching, it would have been obvious to modify Brunelle's game by including a step of providing a player a first bonus amount level if a player's three card hand comprises a predetermined winning **poker rank** of cards such as Six, seven and eight of the same suit (100 tokens won) or Three 7's (50 tokens won). The Six, seven and eight of the same suit is considered a **poker rank (straight flush)**, and the **three 7's is considered**

a poker rank (three-of-a-kind). This modification would have given the players the perception of more opportunities at winning in Brunelle's game, this making Brunelle's game more attractive.

In regard to claims 6-8, determining exactly the predetermined poker hand rank of the player or the bonus hand (e.g. flush, a specified pair, etc.) would have been a casino business decision based on maximizing revenue and player interest. This is always obvious in the art.

Claim 9 is the broadest claim, and Brunelle clearly has many of the features recited in claim 9. Brunelle includes the steps of dealing a bonus hand 26, dealing a dealer's hand 36, and dealing a player hand. The player plays against the dealer's hand for rank 56, col. 4, lines 32-35. The player may have a bonus award to be paid on the player's hand (a hand of three aces which pays 30-to1), col. 4, lines 36-39. The bonus award may be enhanced by a predetermined rank being present in the bonus hand, col. 4, lines 48-56. The only feature not clearly recited in claim 9 is "casino table **poker-type** card game". See the teaching of Jones above.

(10) Response to Argument

The Applicant has argued that in claim 1, the claimed recitation "when the player hand has at least a predetermined winning arrangement of cards comprising a preselected winning poker rank, the player attains at least a first bonus amount level on the player's placed optional side bet bonus wager" does not occur in Brunelle. In Brunelle's game, player's initial hands can win only on their game bet, when the player

hand wins against the dealer's hand. There is no payout on the side bet of Brunelle exclusively base on a player's winning poker hand.

The Examiner takes the position that in claim 1, there is no limitation that the side bet is **exclusively** based on a player's winning poker hand. Therefore, it does not matter whether Brunelle's player hand wins against the dealer hand or not. Brunelle clearly discloses that when a player hand has a winning arrangement of cards comprising a preselected winning rank, the player attains at least a first bonus amount level on the player's placed option side bet bonus wager, col. 4, lines 42-47.

The Applicant has also argued that in claim 1, the claimed recitation "when the player has a winning arrangement of cards comprising a preselected poker rank, and the first number of cards has at least a winning arrangement of cards" does not occur in Brunelle. In Brunelle's game, the first hand does not receive any payment on the bonus round because of its own rank, and because the winning event is direct play against the dealer's hand. Brunelle does not have any "predetermined winning arrangement of cards. Brunelle has a qualifying count to enter the bonus round.

The Examiner takes the position that in claim 1 there is no recitation that a player receives a **payment** on the bonus round. Claim 1 broadly recites "the player **attains** at least a first bonus amount level on the player's placed optional side bet bonus wager". In Brunelle's game, a player attains a first bonus amount level when a player has a winning arrangement of cards that include an arrangement of cards totalling counts of 3, 4, 5,9, see col. 4, lines 42-47 and see Table II, left most column.

The Applicant has also argued that in claim 1, the claimed recitation "when the player has a winning arrangement of cards and the first number of cards has at least a winning arrangement of cards, enhancing the first bonus amount level attained by the player" is not taught in Brunelle, or Brunelle and Jones in combination. In Brunelle there is no winning arrangement of cards in the player's hand, only a qualifying count. Brunelle cannot win bonus money on the side bet bonus wager based solely on the bonus wager and the count of the player's hand. There is never any "first bonus amount level attained by the player" based on the bonus wager. Additionally, when Brunelle wins on the relative cumulative count of the player's hand versus the dealer's hand, this is not a win under the bonus wager side bet as recited in the claim, but is a win on the ante or play wagers.

Again the Examiner takes the position that the winning arrangement of cards in Brunelle include an arrangement of cards totalling counts of 3, 4, 5,9, see col. 4, lines 42-47 and see Table II, left most column. Also the broad recitation "the first bonus amount level **attained** by the player", does not necessarily mean the player wins bonus money on the side bonus wager. Furthermore, the Examiner does not consider whether Brunelle wins on the relative cumulative count of the player's hand versus the dealer's hand.

The Applicant has also argued that Jones et al. teaches his own unique bonus event, which has no qualification step and is a single stage poker event with bonus paid on both the side bet and play bet (supplementing the ante). There are not two potential distinct bonus event payouts on a single side bet wager as recited in the claims. There

is no motivation to combine the elements of Brunelle with the elements of Jones to produce a side bet bonus wager event where two distinct bonuses are available on the same wager.

The Examiner takes the position that the Applicant has analyzed the Jones et al. reference individually by stating the differences between Jones et al. and the claimed invention (Jones has no qualification step, Jones is a single stage poker event, Jones does not have two potential distinct bonus event payouts, etc.) In response to Applicant's arguments against the Jones et al. reference individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

In response to Applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Jones et al. was cited by the Examiner because it taught that when a player's hand has at least a predetermined winning **poker** arrangement of cards, (e.g. Six, seven and eight of the same suit, Three 7's), the player attains at least a first bonus amount level (e.g. 100

Art Unit: 3714

tokens, 50 tokens) on the player's placed optional side bet bonus wager, col. 3, line 47 to col. 4, line 8. This is the motivation for combining the references.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Benjamin H. Layno/

Primary Examiner, Art Unit 3711

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